

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF CARLSBAD  
AND THE CARLSBAD POLICE OFFICERS' ASSOCIATION**

Term: January 1, 2013 - December 31, 2014

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## **MEMORANDUM OF UNDERSTANDING**

This memorandum of Understanding is made and entered into as of the date of formal approval hereof by the City Council of the City of Carlsbad, by and between designated management representatives of the City of Carlsbad (hereinafter referred to as the "City") and the designated representatives of the Carlsbad Police Officers' Association (hereinafter referred to as "CPOA").

### **PREAMBLE**

It is the purpose of the Memorandum of Understanding (hereinafter referred to as "Memorandum") to promote and provide for harmonious relations, cooperation and understanding between the City management representatives and the local safety police employees covered under this Memorandum; to provide an orderly and equitable means of resolving any misunderstandings or differences which may arise under this Memorandum; and to set forth the agreement of the parties reached as a result of good faith negotiations regarding wages, hours and other terms and conditions of employment of the employees covered under this Memorandum, which agreement the parties intend jointly to submit and recommend for City Council approval and implementation.

### **ARTICLE 1. IMPLEMENTATION**

This Memorandum constitutes a mutual recommendation to be jointly submitted to the City Council following ratification of the Memorandum by the membership of CPOA. It is agreed that the City will act in a timely manner to make the changes in City ordinances, resolutions, rules, policies and procedures and those of the Police Department necessary to implement this Memorandum.

### **ARTICLE 2. TERM AND RENEGOTIATION**

- 2.1 The term of this Memorandum shall commence on January 1, 2013, and shall continue until December 31, 2014.
- 2.2 Negotiations for a successor Memorandum shall begin by the exchange of written proposals in approximately September 2014.

### **ARTICLE 3. RETENTION OF BENEFITS**

Existing benefits contained in this Memorandum shall not be changed during the term of this agreement without the mutual consent of the parties hereto. Existing benefits not set forth in this Memorandum which fall within the scope of representation shall not be changed by the City without advance notice and an opportunity to meet and confer regarding such change. The parties recognize and accept the concept of past practices as to matters within the scope of representation and agree to meet and confer regarding a proposed change in any such practices. The City shall not propose any such changes unless required to do so for operational or organizational reasons.

Notwithstanding the foregoing, during the term of this agreement, neither party will compel the other to meet and confer over any mandatory subject of bargaining.

### **ARTICLE 4. AUTHORIZED AGENTS**

For the purpose of administering the terms and provisions of this Memorandum:

- 4.1 City's principal authorized agent shall be the City Manager or a duly authorized representative [Address: 1200 Carlsbad Village Drive, Carlsbad, California 92008; Telephone: (760) 434-2821] except where a particular representative is specifically designated in connection with the performance of a specific function or obligation set forth herein.
- 4.2 CPOA's principal authorized agent shall be its President or duly authorized representative [Address: P.O. Box 1392, Carlsbad, California 92008; Telephone: (760) 931-2144] and Law Offices of Silver, Hadden & Silver, [Address: 1428 Second Street, Santa Monica, California 90401; Telephone (310) 393-1486].

#### ARTICLE 5. RECOGNITION

The City recognizes CPOA as the majority representation of the bargaining unit that includes the classifications as listed in the attached salary schedule.

#### ARTICLE 6. SAVINGS CLAUSE

- 6.1 If any articles of this Memorandum should be found invalid, unlawful or unenforceable by reason of existing or subsequent enacted legislation or by judicial authority, all other articles and sections of this Memorandum shall remain in full force and effect for the duration of this Memorandum.
- 6.2 In the event of invalidation of any article or section, the extinguished benefit shall be replaced by a substitute benefit of comparable value. The City and the Association shall meet within thirty (30) days following the invalidation for the purpose of determining the specific nature and form of the replacement benefit.

#### ARTICLE 7. NONDISCRIMINATION CLAUSE

Neither City nor CPOA shall interfere with, intimidate, restrain, coerce, or discriminate against employees covered by this Memorandum because of exercise of rights to engage or not engage in CPOA activity or because of the exercise of any right provided to the employees by this Memorandum.

#### ARTICLE 8. COMPENSATION ADJUSTMENTS

In the first full pay period following Council approval of this MOU, all CPOA-represented employees active on payroll shall receive a taxable non-persable stipend equal to \$2,400.

In the first full pay period of calendar year 2014, all CPOA-represented employees active on payroll shall receive a taxable non-persable stipend equal to \$2,700.

#### ARTICLE 9. MANAGEMENT RIGHTS

The rights of the City include, but are not limited to, the exclusive right: to determine the mission of its major service areas, departments, commissions, and boards; to set standards of service; to determine procedures and standards of selection for employment and promotion; to direct its employees; to take disciplinary action; to relieve employees from duty because of lack of work or other legitimate reasons; to transfer employees among various department activities and work groups; to maintain the efficiency of City operations; to determine the methods, means and personnel by which City operations are to be conducted; to determine the contents of job classifications; to take all necessary actions to carry out its mission in emergencies; and to exercise complete control and discretion over its organization and the

technology for performing its work. Nothing in this Memorandum shall require the City to meet and confer over the exercise of its management rights, however, in so doing, the City shall comply with all applicable provisions of this Memorandum.

#### ARTICLE 10. GRIEVANCE PROCEDURE

10.1 Purpose. The purpose and objectives of the grievance procedure are:

- 10.1.1 To promote improved employer-employee relations by establishing grievance procedures on matters for which an appeal or hearing is not provided by other regulations.
- 10.1.2 To assure fair and equitable treatment of all employees and promote harmonious relations among employees, supervisors, and management.
- 10.1.3 To encourage the settlement of disagreements informally at the employee-supervisor level and provide an orderly procedure to handle grievances throughout the several supervisory levels where necessary.
- 10.1.4 To provide that appeals shall be conducted as informally as possible.
- 10.1.5 To resolve grievances as quickly as possible and correct, if possible, the cause of grievances, thereby reducing the number of grievances and future similar complaints.
- 10.1.6 This grievance procedure is applicable to all employee classifications represented by the CPOA in the Police Department of the City of Carlsbad.

10.2 Definitions. For the purpose of this grievance procedure the following definitions shall apply.

- 10.2.1 City Manager: The City Manager.
- 10.2.2 Assistant City Manager: An Assistant City Manager.
- 10.2.3 Department: An office, department, or institution of the City.
- 10.2.4 Department Head or Head of a Department: The chief executive officer of a department.
- 10.2.5 Employee or City Employee: Any officer or employee of the City, except an elected official.
- 10.2.6 Employee Representative: An individual who appears on behalf of the employee.
- 10.2.7 Grievance: A complaint of an employee or a group of employees arising out of an application or interpretation of existing rules, regulations, or policies which come under the control of a Department Head.

10.2.8 Immediate Supervisor: The individual who assigns, reviews, or directs the work of an employee.

10.2.9 Interested Party: An individual having pertinent and/or immediate knowledge of the circumstances out of which the grievance arose.

10.2.10 Supervisor: The individual to whom an immediate supervisor reports.

### 10.3 Reviewable and Non-Reviewable Grievances

10.3.1 To be reviewable under this procedure a grievance must:

- (a) Concern matters or incidents that have occurred.
- (b) Result from an act or omission by management regarding working conditions or other matters over which the head of the department has control.
- (c) Arise out of a specific situation, act, or acts considered to be unfair which result in inequity or damage to the employee.
- (d) Arise out of an interpretation and application of the Memorandum or Personnel Rules and Regulations.

10.3.2 A grievance is not reviewable under this procedure:

- (a) If it is a matter which would require a modification of a policy established by City Council or by law;
- (b) Is reviewable under some other administrative procedure and/or rules of the City of Carlsbad (See, e.g., Article 22 hereunder), such as:
  - (1) Applications for changes in title, job classification, or salary.
  - (2) Appeals from formal disciplinary proceeding.
  - (3) Appeals from work performance evaluations.

### 10.4 Special Grievance Procedure Provisions: The following special provisions apply to the grievance procedure.

10.4.1 Procedure for Presentation: In presenting a grievance, an employee shall follow the sequence and the procedure outlined in Section 10.5 of this procedure.

10.4.2 Prompt Presentation: The employee shall discuss the grievance with an immediate supervisor promptly after (i.e., when grievant knew or should have known) the act or omission of management caused the grievance.

10.4.3 Prescribed Form: The written grievance shall be submitted on a form prescribed by the Human Resources Director for this purpose.

- 10.4.4      Statement of Grievance: The grievance shall contain a statement of:
- (a)      The specific situation, act, or acts considered to be unfair and the reasons why.
  - (b)      The inequity or damage suffered by the employee.
  - (c)      The relief sought.
- 10.4.5      Employee Representative: The employee may choose someone as a representative at any step in the procedure. No person hearing a grievance need recognize more than one representative for any one time, unless he/she so desires.
- 10.4.6      Interested Parties: There shall be no limit placed upon the number of interested parties which may provide information during the hearing of a grievance at any step of the grievance procedure.
- 10.4.7      Handled During Working Hours: Whenever possible, grievances will be handled during the regularly scheduled working hours of the parties involved.
- 10.4.8      Extension of Time: The time limits within which action must be taken or a decision made as specified in this procedure may be extended by mutual written consent of the parties involved. A statement of the duration of such extension of time must be signed by both parties involved at the step to be extended.
- 10.4.9      Consolidation of Grievances: If the grievance involves a group of employees or if a number of employees file separate grievances on the same matter, the grievances shall be handled as a single grievance.
- 10.4.10     Settlement: Any grievance shall be considered settled at the completion of any step if the grievant is satisfied or if the grievant does not present the matter to a higher authority within the prescribed time.
- 10.4.11     Reprisal: The grievance procedure is intended to assure a grieving employee the right to present a grievance without fear of disciplinary action or reprisal, provided the provisions of the grievance procedure are observed. Copies of grievance forms will not be placed in employee personnel records but will be maintained in separate files in the Human Resources Department.
- 10.5      Grievance Procedure Steps: The following procedure shall be followed by an employee submitting a grievance for consideration and action.
- 10.5.1      Discussion With Supervisor: The employee shall discuss the grievance with the employee's immediate supervisor informally. Within seven (7) calendar days, the supervisor shall give a decision to the employee verbally.
  - 10.5.2      Step 1: If the employee and the supervisor cannot reach an agreement to resolve the grievance, the employee may within seven (7) calendar days

present the grievance in writing to the supervisor. The supervisor shall memorialize the prior verbal decision on the grievance and present the grievance to the next-level supervisor within seven (7) calendar days.

The next-level supervisor shall hear the grievance and shall give a written decision to the employee within seven (7) calendar days after receiving the grievance. This portion of this step shall be repeated as necessary until the next-level supervisor is a Police Captain.

- 10.5.3      Step 2: If the employee and the next-level supervisor cannot reach an agreement to resolve the grievance, the employee may within seven (7) calendar days present the grievance in writing to the Police Chief. The Police Chief shall hear the grievance and shall give the written decision to the employee within seven (7) calendar days after receiving the grievance.
- 10.5.4      Step 3: If the employee and Police Chief cannot reach an agreement as to the solution of the grievance, the employee may file a written request with the Human Resources Director, within seven (7) calendar days, to have the grievance heard by a Hearing Officer via the process described in Section 10.5.7. The Human Resources Director shall present a copy of the grievance to the Assistant City Manager who may conduct a meeting with the grievant and/or CPOA representatives to identify and clarify disputed issues and attempt to resolve the grievance prior to presentation of the grievance to the Hearing Officer.
- 10.5.5      Step 4: If the matter is not otherwise resolved, the Hearing Officer shall, within thirty (30) calendar days after receipt of the grievance, hear the grievance and render an advisory opinion to the City Manager. The City Manager shall, within fourteen (14) calendar days after receipt of the advisory opinion, notify the employee of the final action.
- 10.5.6      Any of the above steps may be waived by mutual agreement of the parties.
- 10.5.7      Hearing Officer. The employee or employee organization and the City will attempt to develop a permanent list of five (5) mutually acceptable hearing officers. If the parties cannot mutually agree on the identity of the hearing officer from this permanent list, they will alternately strike names from the list of five using a strikeout procedure. The party striking the first name will be determined by lot.

If a permanent list of five mutually acceptable hearing officers cannot be developed, the parties agree that the advisory hearing will be conducted before a hearing officer selected by the parties from a list of seven hearing officers provided by the California State Mediation and Conciliation Service. If the parties cannot mutually agree on the identity of the hearing officer they will alternately strike names from the list of seven using a strikeout procedure. The party striking the first name will be determined by lot.

All administrative costs associated with the cost of a grievance and the subsequent hearing; including the hearing officer, court reporter and transcription costs, if any, will be shared equally between the City and the

Carlsbad Police Officers' Association. In the case that the Carlsbad Police Officers' Association does not support the grievance continuing to the advisory hearing by a Hearing Officer, all administrative costs associated with the cost of a grievance and the subsequent hearing; including the hearing officer, court reporter and transcription costs, if any, will be shared equally between the City and the employee.

The employee or employee organization will be responsible for the cost of his or her own representation or attorney fees and preparation of documents.

#### ARTICLE 11. STAND-BY

- 11.1 Due to staff limitations, it may be necessary for the Police Chief to schedule employees to be on stand-by to handle overtime work which may arise during other than the employee's normal working hours.
- (a) Incident Stand-by is defined as time in which an employee (a duty detective, detective sergeant or duty traffic investigator) is required, by the Police Chief or designee, to remain at a place where the employee can reasonably expect to respond and arrive at the Carlsbad Police Department within one hour. Employees are expected to respond in a safe and expeditious manner taking only the time necessary to arrive at the Carlsbad Police Department or other designated location. Response delays caused by traffic conditions or other factors beyond the employee's control will not be considered a failure to respond within the requirements of this article.
- (b) Staffing Stand-by is defined as time in which an employee (generally the assigned communications operator) is required, by the Police Chief or designee, to remain available to respond to the Carlsbad Police Department.
- 11.2 Contact Responsibility: An employee assigned to stand-by shall maintain current contact information, either telephone number and/or cell phone number, with the communications center. The employee assigned to stand-by shall be immediately available at the number(s) provided.
- 11.3 Compensation: An employee will be compensated for stand-by time at the rate of twenty two dollars (\$22) per 24 hours or fraction thereof. Employees on stand-by, called to perform work, will be compensated for all actual hours worked in accordance with overtime and call-back rules.
- 11.4 General Call Out: Certain special assignments, such as canine, investigations, field evidence technicians and traffic are expected to respond to call-outs if they are available but unless they are assigned to stand-by they are not required to maintain an available status.
- 11.5 Sick Notification: If any employee is unable to fulfill any portion of their stand-by assignment due to illness or other emergency, it is the employee's responsibility to notify their supervisor as soon as possible so that an alternate may be assigned.

#### ARTICLE 12. BILINGUAL PAY

Any employee annually certified, as the Police Chief may direct, as a qualified translator-interpreter of the Spanish language shall receive forty dollars (\$40) per pay period.



### ARTICLE 13. BASIC WORK WEEK/WORK DAY

- 13.1 The official workweek for non-sworn employees who work a 9/80 schedule begins on Friday at 12:01 p.m. and ends on the following Friday at 12:00 p.m.
- 13.2 The official workweek for non-sworn employees working any schedule other than a 9/80 schedule begins on Sunday at 12:01 p.m. and ends on the following Sunday at 12:00 p.m.
- 13.3 In accordance with section 7(k) of the Fair Labor Standards Act, the official work period for sworn employees begins on Sunday at 12:01 p.m. and ends 14 days later at 12:00 p.m. Overtime shall be compensated in the manner prescribed by Article 17 of this Memorandum.
- 13.4 References in the Memorandum to a 3/12 schedule refer to a schedule in which employees work three 12-hour shifts during one of the workweeks in a two-week pay period and three 12-hour shifts plus one 8-hour shift during the other workweek in the pay period, for a total of 80 hours worked in the pay period. For employees who are not covered by the 7(k) exemption contained in Article 13.3 of the Memorandum, hours worked in excess of 40 in a workweek will be compensated in accordance with Article 17 of the Memorandum.
- 13.5 All unit members may be assigned to either a 3/12, 5/8, 4/10 or 9/80 work schedule. In general, unit members assigned to patrol and dispatch shall work a 3/12 schedule.
- 13.6 Unit members assigned to motors shall be provided one hour of paid leave (at straight time) each regularly scheduled work day for care and maintenance of the motor.
- 13.7 Unit members assigned as canine handlers shall work a weekly 3/12+4 schedule consisting of three work days of twelve consecutive work hours plus one additional shift consisting of 4 consecutive work hours per week. Unit members assigned as canine handlers shall also be paid 4 hours of overtime each work week for care and maintenance of the canine.
- 13.8 Deployments shall be six months in length and shifts shall be bid one month in advance according to seniority.
- 13.9 Patrol employees (police officers assigned to patrol, canine, traffic, community policing and community service officers assigned to patrol and traffic) will be given two (2) fifteen-minute rest periods and one (1) half-hour lunch break each workday without loss of pay.
- 13.10 Communications Operators/Supervisors – The Police Communication Center is a fluid and ever changing environment and flexibility is paramount to efficient operations. To achieve effective operations and meet changing needs in activity and staffing levels, communication operators/supervisors are expected to remain flexible in their schedule in regard to rest periods and meal breaks. The following break policy for communication operators/supervisors is intended to balance the need for employee break time and the need for operational flexibility. During the life of this agreement and to the extent this agreement complies with state law, the provisions of (a) and (b) below shall be in effect:
  - (a) Breaks – Communications operators/supervisors are entitled to two (2) 15 minute rest periods and one (1) 30 minute lunch break each workday without loss of pay. Due to the unique needs of a 911 center, there may be times when communications operators/supervisors will have to adjust break times or work through their breaks. At an

employee's request and with supervisor approval, the break periods may be combined into a one (1) hour compensated break.

- (b) Availability – Communications operators/supervisors are expected to be available to resume their duties during their break time and, therefore, are compensated for their breaks. When staffing and activity levels permit, communication operators/supervisors are allowed to leave the premises. When on a break communications operators/supervisors are subject to recall via cell phone, pager, and/or police radio and will remain within a fifteen (15) minute recall response to the Communications Center. Activities that may interfere with a communications operator/supervisor's ability to return to the Communications Center within 15 minutes should not be conducted during break time but should be accommodated with other leave time such as comp. time or vacation time.

#### ARTICLE 14. COURT AND HEARINGS

- 14.1 Compensation: Off duty personnel who appear in court or at a hearing pursuant to an official request from a legally constituted body regarding matters arising out of, or associated with, their employment shall be compensated at a minimum of four (4) hours per day calculated at time and one-half the employee's regular rate of pay. Actual time spent in court over the four (4) hour minimum on the same day is compensable at time and one-half the employee's regular rate of pay.

- 14.2 Contiguous Time: This minimum hour guarantee shall not apply if the court or hearing appearance is contiguous with the commencement or end of the employee's regularly scheduled work shift. In that situation, the employee shall receive overtime compensation at the following rate.

Any subpoena received with an appearance time of two (2) hours prior to the commencement of the employee's work shift will receive two (2) hours compensation at the overtime pay rate.

Any subpoena received with an appearance time of one (1) hour prior to the commencement of the employee's work shift will receive one (1) hour compensation at the overtime pay rate.

Officers who receive subpoenas for separate cases on the same day that overlap minimum hour designations are entitled to contiguous time as opposed to separate three/four hour minimums.

- 14.3 Lunch Break Compensation: When personnel required to appear in court or at a hearing are held over during the normal lunch break for further appearance after lunch, they shall be entitled to credit for the lunch break as time worked.
- 14.4 Transportation: When available, Carlsbad Police Department vehicles shall be used for employee transportation. Mileage expenses will not be paid for appearances in court or at a hearing when the court or hearing location is within a 20 mile radius of the Carlsbad Police Department. If the court or hearing location is beyond a 20 mile radius of the Carlsbad Police Department and a Carlsbad Police Department vehicle is not available, the employee will receive reimbursement for mileage expenses to and from the court or hearing location, or the round trip distance between the court or hearing location and the Carlsbad Police Department, whichever is less. Employees shall be reimbursed for mileage expenses as set out in Council Policy Statement of the City of Carlsbad titled "Travel Policy" with an effective date of 12/14/99, including any subsequent changes to this policy.

- 14.5 Phone Testimony: When off duty personnel provide court or hearing testimony via telephone, the employee shall be compensated for the actual time of the telephone testimony or a minimum of one (1) hour, whichever is greater, at time and one-half the employee's regular rate of pay.
- 14.6 District Attorney Conversation: When off duty personnel receive calls from District Attorney personnel regarding criminal cases, employees will receive no compensation for conversations lasting less than 10 minutes. Employees will receive compensation at time and one-half the employee's rate of pay for the actual time of the conversation or a minimum of one (1) hour, whichever is greater, for conversations lasting 10 minutes or longer. Employees receiving multiple calls within the same one hour period shall only receive one hour compensation.

#### ARTICLE 15. SICK LEAVE/BEREAVEMENT LEAVE

For the purpose of this section, the term "family member" shall be defined in the personnel rules and regulations.

Sick leave can be used in 15 minute increments.

- 15.1 Every CPOA-represented employee will accrue sick leave on a daily basis at the rate of sixteen (16) minutes for each continuous calendar day of service.
- 15.2 Accrued, unused sick leave may be carried over to succeeding years, but will not be paid out when an employee's employment with the City ends.
- 15.3 Employees shall be granted sick leave: (1) to recuperate from or receive treatment for personal injuries or illnesses; (2) to care for an injured or ill family member; or (3) to attend the employee's own or a family member's medical, dental, or optometry appointments.
- In addition, in the event of the death of an employee's family member, the employee may take up to three (3) shifts of paid time off for bereavement. The three shifts do not have to be taken consecutively. In extreme circumstances, the Police Chief may allow the employee to take additional time off in the form of sick leave, provided the employee has sick leave available.
- 15.4 An employee who is absent because of a personal injury or illness or the injury, illness, or death of a family member must notify the employee's supervisor as soon as possible on the first day of the absence. An employee who needs to be absent to attend a medical, dental, or optometry appointment must have the absence approved in advance by the employee's supervisor.
- 15.5 Sick leave may not be taken as vacation time, nor compensated in cash at any time, except as provided for in this article.
- 15.6 If an absence is for more than three (3) consecutive workdays and/or if it is covered by workers' compensation, the pregnancy disability provisions of the California Fair Employment and Housing Act, the California Family Rights Act, or the federal Family and Medical Leave Act, the City may require the employee to provide a medical certificate supporting the need for the absence.
- 15.7 Time off to take a physical examination for induction into or recall to active duty with the Armed Forces will be handled in accordance with applicable state and federal law.

- 15.8 An employee making a blood donation without charge will be given reasonable time off for that purpose. No charge will be made against the employee's sick leave or vacation when the absence is approved in advance by the employee's supervisor.
- 15.9 During the first pay period of each fiscal year, any regular employee who has accrued and maintains a minimum of one hundred sixty (160) hours of sick leave will be permitted to convert up to one hundred twenty (120) hours of accrued, unused sick leave to vacation at ratio of twenty four (24) hours of sick leave to eight (8) hours of vacation. However, an employee will not be permitted to convert sick leave to vacation if the conversion would cause the employee to exceed the vacation accrual maximum specified in Article 33.
- 15.10 Any regular employee applying for retirement with the Public Employees' Retirement System may convert accrued and unused sick leave to service time at the rate specified in California Government Code section 20965.
- 15.11 Nothing in this Article precludes the City from taking appropriate action in the event of abuse of sick leave.

#### ARTICLE 16. ASSOCIATION RIGHTS

- 16.1 The City recognizes the right of the CPOA to govern its internal affairs.
- 16.2 The parties to this Memorandum fully support the concept of the Public Safety Officers' Procedural Bill of Rights Act, Sections 3300, et seq., of the Government Code.
- 16.3 Upon the receipt of a written request and authorization from an employee for deduction of CPOA dues and other lawfully permitted deductions, the City shall withhold such dues and deductions from the salary of the employee and remit the withholdings to the CPOA. The City shall continue to withhold such deductions unless the employee files a statement with the City withdrawing authorization for the continued withholding of the deductions during the month of March of any year covered by the term of this Memorandum. The effective date of withholding, time of remitting withholdings to the CPOA, and all procedural matters shall be determined in accordance with the Rules and Regulations of the City.
- 16.4 The CPOA shall provide and maintain with the City a current list of the names and all authorized representatives of the CPOA. An authorized representative shall not enter any work location without the consent of the Police Chief or his designee or the City Manager or his designee. The Police Chief or his designee shall have the right to make arrangements for a contact location removed from the work area of the employee.
- 16.5 The CPOA shall be allowed to designate employee representatives to assist employees in:
  - 16.5.1 Preparing and processing grievances;
  - 16.5.2 Preparing and presenting material for Disciplinary Appeals hearings;
  - 16.5.3 Preparing and presenting material for any matter for which representation is granted pursuant to the provisions of California Government Code Sections 3300, et seq., known as the Public Safety Officers' Procedure Bill of Rights Act.

- 16.6 The CPOA may designate one employee representative to assist an employee in preparing and presenting materials for the above-listed procedures. The employee representative so designated shall be allowed reasonable release time from regularly scheduled duties for the purpose of investigating and preparing materials for such procedures. Employee representatives who investigate, prepare or present materials during off-duty time shall do so on their own time. Employee representatives and employees who attend Personnel Board or City Council hearings during the off-duty time shall do so on their own time; providing, however, that employees who are ordered or subpoenaed to attend such hearings shall be compensated in accordance with the overtime provisions of this Memorandum.
- 16.7 Designated employee representatives shall be allowed reasonable release time from regularly scheduled duties to attend meetings relative to other matters of employer-employee relations.
- 16.8 Designated employee representatives requesting time off under this Article shall direct such request to their immediate supervisors in writing within a reasonable time period to the date requested, in order to assure that the Department meets its staffing needs and to assure sufficient coverage of departmental assignments.
- 16.9 The City will continue to furnish bulletin board space in the Police Department for the exclusive use of the CPOA. Material placed on the bulletin boards shall be at the discretion of the CPOA and shall be removed by management only in the event the material is obviously offensive to good taste or defamatory, and shall be removed only on prior notification to a CPOA representative. The CPOA shall be responsible for maintaining bulletin boards exclusively used by the CPOA in an orderly condition and shall promptly remove outdated materials.
- 16.10 Use of City Facilities
- 16.10.1 The CPOA may, with the prior approval of the City Manager, be granted the use of the City facilities for off-duty meetings of the Police Department employees, provided space is available. All such requests will be in writing to the City Manager.
- 16.10.2 The CPOA may, with the prior approval of the Police Chief, be granted the use of Police facilities for off-duty meetings of the Police Department employees, provided space is available. All such requests will be in writing to the Police Chief. In the event the Police Chief denies use of Police Department facilities, an appeal can be made to the City Manager.
- 16.10.3 The use of City equipment other than items normally used in the conduct of business meetings, such as desks, chairs and blackboards, is strictly prohibited, the presence of such equipment in approved City facilities notwithstanding.

## ARTICLE 17. OVERTIME

Overtime Pay: Each employee covered by this agreement shall be entitled to overtime compensation at the premium rate of one and one-half (1-1/2) times the employee's regular rate of pay for all time worked, or regarded as having been worked because the employee is on an approved paid leave, in excess of the employee's regularly scheduled work day and/or in excess of forty (40) hours per work week for non-sworn employees or eighty (80) hours per fourteen (14) day work period for sworn employees.

- 17.1 Comp. Time Option: Each employee shall have the option (with the exception of “Pay Only Details”) of receiving compensatory time off at the premium rate in lieu of cash, subject to a maximum accumulation of one hundred (100) hours of compensatory time off. While an employee has accumulated the maximum number of hours of compensatory time off, he/she shall receive all overtime compensation in cash until such time as the employee’s compensatory time off bank is no longer at the maximum.
- 17.2 Comp. Time Exception: Special details where the City is reimbursed for employees’ compensation from an outside entity shall be for pay only. Employees volunteering for such details are not eligible for compensatory time off in lieu of cash.

#### ARTICLE 18. CALL BACK

- 18.1 Description: If an employee is required to return to his or her place of employment or other work location directed by the employer at a time that is not part of the employee’s regularly scheduled work shift, that employee shall receive appropriate overtime pay, as described in Article 17, for the actual number of hours worked, subject to the following:
- 18.2 Scheduled Call Back Minimum: For Call Backs scheduled in advance, such as for training or firearms qualification, the employee shall receive a minimum of two hours of appropriate overtime compensation.
- 18.3 Non-scheduled Call Back Minimum: For Call Backs not scheduled in advance, the employee shall receive a minimum of four hours of appropriate overtime compensation.
- 18.4 Report Call Back Minimum: Employees are encouraged to complete reports prior to scheduled days off. A supervisor must determine if the report can be “pending” until the employee returns to regular scheduled work or if the report needs to be completed prior to that time. The supervisor’s approved “pending completion date” will determine the employee’s compensation for completing a “pending” report prior to the employee’s next regularly scheduled duty as follows:
- (a) Before Next Duty Day: If an employee “pends” a report needing to be completed before the employee’s next scheduled duty day, the employee shall receive a minimum of two hours of appropriate overtime compensation for returning to the station and completing the report.
  - (b) Next Duty Day: If an employee “pends” a report not needing to be completed until the employee’s next scheduled duty day and it is later determined by a supervisor the report needs to be completed before the employee’s next scheduled duty day, the employee shall receive a minimum of four hours of appropriate overtime compensation for returning to the station and completing the report.
- 18.5 Travel Time: Employees who are called back shall receive travel time to and from the call back assignment. Travel time is included as part of the call back minimum compensation or the call back overtime if the call back (travel time plus detail time) exceeds the approved minimum guarantees. The maximum approved travel time is set as follows:
- (a) Police Department: If the call back is to the Carlsbad Police Department or other site within a 20 mile radius of the Carlsbad Police Department, the travel time is capped at a maximum of one hour.

- (b) Other Site: If the call back is to a site outside of the 20 mile radius of the Carlsbad Police Department, travel time shall be the actual amount of time required to drive to the call back site and return to employee's residence.
- 18.6 Transportation: Mileage reimbursement for expenses to the Carlsbad Police Department or to any site within a 20 mile radius of the Carlsbad Police Department will not be compensated. If an employee is directed to a site beyond a 20 miles radius of the Carlsbad Police Department, the employee will receive mileage reimbursement for expenses to and from the directed site or the round trip distance between the directed site and the Carlsbad Police Department, whichever is less.
- 18.7 Contiguous Time: These minimums shall not apply to situations where the call back is contiguous with the commencement or end of the employee's regularly scheduled work shift. In that situation, the employee shall receive applicable overtime compensation for all time actually worked beyond the regularly scheduled work shift.

#### ARTICLE 19. SENIORITY

- 19.1 The seniority of an employee is based on the number of calendar months of continuous service in the Carlsbad Police Department. Within a rank, the seniority of an employee is based on the number of calendar months of continuous service in the Carlsbad Police Department in that rank. An employee promoted to a higher rank and later demoted back to the original rank shall have seniority calculated for all time of continuous service in the higher rank and the original rank combined.
- 19.2 If an employee voluntarily leaves the City's employ or is dismissed for cause, the employee will lose all seniority credited prior to then. Reemployment will not restore the lost seniority. Instead, if an employee is reemployed, seniority will be based on the reemployment date.
- 19.3 An employee laid off after completing probation and acquiring regular status will, after reinstatement, regain the seniority credit the employee possessed at the time of layoff, provided the reinstatement occurs within twenty-four (24) months of the layoff.
- 19.4 A leave of absence in excess of thirty (30) continuous days will not count as continuous service for the purpose of determining seniority.

#### ARTICLE 20. LEGAL REPRESENTATION

- 20.1 Upon request of an employee and subject to any legal limitations, the City will provide for the defense of the employee in any civil action or proceeding initiated against the employee by a person or entity other than the City because of an act or omission occurring within the course and scope of the employee's employment.
- 20.2 Nothing in this Memorandum requires the City to provide for the defense of an employee where:
  - (a) the City has the discretion under the California Government Code not to provide for a defense;
  - (b) the act or omission was not within the course and scope of the employee's employment; (c) the act or omission was the result of the employee's actual fraud, corruption, or malice; or (d) providing for the defense would create a specific conflict of interest between the City and the employee within the meaning of California Government Code section 995.2.

- 20.3 Nothing in this Memorandum is intended to give an employee more rights or privileges than those contained in the California Government Code.

#### ARTICLE 21. PEACEFUL PERFORMANCE OF CITY SERVICES

- 21.1 During the term of the Memorandum, the CPOA, its representatives, or members shall not engage in, cause, instigate, encourage or condone a strike or work stoppage of any kind against the City of Carlsbad.
- 21.2 During the term of the Memorandum, the City will not instigate a lockout over a dispute with the employees.
- 21.3 As used in this section, "strike or work stoppage" means the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions of compensation, or the rights, privileges or obligations of employment.

#### ARTICLE 22. DISCIPLINE OF AN EMPLOYEE

- 22.1 The City may only discipline regular employees for just cause. In the case of disciplinary action involving suspension, demotion or discharge, the employee shall be given notice of the action to be taken, the evidence or materials upon which the action is based, and an opportunity to respond to the Police Chief either orally or in writing, provided the employee requests the opportunity within seven (7) calendar days of the notice of the action. The above process will occur prior to the imposition of the discipline.
- 22.2 Except as provided in Section 22.4, all employees have the right to appeal their discipline according to the appeal procedure as set out below. Written notice of discipline shall inform and remind the disciplined employee of this right.

Hearing Officer. The employee or employee organization and the City will attempt to develop a permanent list of five (5) mutually acceptable hearing officers. If a mutually acceptable list cannot be developed, the parties agree that the advisory hearing will be conducted before a hearing officer selected by the parties from a list provided by the California State Mediation and Conciliation Service. If the parties cannot mutually agree on the hearing officer they will use a strikeout procedure using a list of seven names provided by the California State Mediation and Conciliation Service. The appellant will have the prerogative of striking the first name.

The City will bear all administrative costs associated with an appeal of discipline and the subsequent hearing including the hearing officer, court reporter and transcription costs, if any.

The employee or employee organization will be responsible for the cost of his or her own representation or attorney fees and preparation of documents.

- 22.3 Once discipline has been imposed, the Police Chief or an authorized designee shall specify the period of time, from one to four years, that the discipline will remain in the affected employee's personnel records, unless a longer period is required by law. At the end of the designated period of time, the disciplinary action shall be removed from the employee's personnel file. It is the responsibility of the employee to initiate a request for removal of disciplinary action from the employee's personnel file. The only permitted use of the removed disciplinary action shall be in



a later disciplinary proceeding where there is an allegation of similar or cumulative activity or misconduct.

- 22.4 Nothing in this Memorandum shall be construed to require “cause” or “just cause” for the rejection of a probationary employee prior to the expiration of the probationary period. A probationary employee rejected during the probationary period shall not be entitled to appeal such rejection to the Hearing Officer, but shall be entitled to an opportunity to discuss the rejection with the Police Chief.
- 22.5 Right of Appeal. Any regular employee shall, within seven (7) calendar days, have the right to appeal to the Hearing Officer any disciplinary action, interpretation or alleged violation of the Personnel Ordinance or Personnel Rules, except in instances where the right of appeal is specifically prohibited by the Personnel Ordinance or Personnel Rules, or this Article.
- 22.6 Method of Appeal. Appeals shall be in writing, subscribed by the appellant, and filed with the Human Resources Director, who shall, within ten (10) calendar days after receipt of the appeal, inform the Hearing Officer of the action desired by the appellant and the reasons why. The formality of a legal pleading is not required.
- 22.7 Notice. Upon the filing of an appeal, the Human Resources Director shall set a date for the hearing on the appeal not less than ten (10) calendar days nor more than thirty (30) calendar days from the date of filing, unless the parties mutually agree to a later hearing date. The Human Resources Director shall notify all interested parties of the date, time, and place of the hearing.
- 22.8 Hearings. Unless physically unable to do so, the appellant shall appear personally before the Hearing Officer at the time and place of the hearing. The appellant may be represented at the hearing by any person or attorney the appellant selects and may produce any relevant oral or documentary evidence. The City shall bear the burden of proof; therefore, the City shall state its case first and, at the conclusion, the appellant may then present evidence. Rebuttal matter not repetitive may be allowed in the discretion of the Hearing Officer. Cross-examination of witnesses shall be permitted. The conduct and decorum of the hearing shall be under the control of the Hearing Officer, with due regard to the rights and privileges of the parties appearing before it. Hearings need not be conducted according to technical rules relating to evidence and witnesses. Hearings will be closed unless at least four (4) business days prior to the hearing the appellant, in writing, requests an open hearing. At the conclusion of the hearing, the hearing officer will make a recommendation. If either party disagrees with the Hearing Officer’s recommendation, that party may request, within ten (10) calendar days, to present their case to the City Council before the City Council renders a final decision.
- 22.9 Findings and Recommendations. The Hearing Officer shall, as soon as possible after the conclusion of the hearing, certify his/her findings and decisions in writing to the City Council and to the appellant. The City Council shall review the findings and recommendations of the Hearing Officer and may then affirm, revoke or modify the action taken as, on its judgment, seems warranted, and the action taken shall be final. The Hearing Officer may submit a minority or supplemental finding and recommendation. In the case of suspension, discharge or demotion, the appointing power shall reinstate an employee to the employee’s former status if the City Council determines that the action was for discriminatory reasons.

## ARTICLE 23. PROBATIONARY PERIOD

- 23.1 For sworn personnel, the initial hire probationary period shall be one year from the date the employee is sworn as an officer. For non-sworn personnel, the initial hire probationary period shall be one year from the date of hire. The probationary period will permit both the supervisor and the employee to become acquainted and to determine the adaptability and the fitness of the employee to the assigned work. The employee will find this period helpful in evaluation of the City, his/her duties, his/her work and other satisfaction.
- 23.2 Any continuous work time in excess of 80 hours missed by a probationary newly hired employee shall not apply to the employee's probationary period. The probationary period and salary anniversary date shall be extended by the time missed.
- 23.3 All personnel promoted within the Department shall be on probation in the promotional position for a period of one year from the date of promotion.

## ARTICLE 24. RETIREMENT BENEFITS

- 24.1 The City has contracted with CalPERS for the following retirement benefits:

- Safety Tier 1 (employees entering safety membership for the first time prior to October 4, 2010) – The retirement formula shall be 3% @ 50; single highest year final compensation.
- Safety Tier 2 (employees entering safety membership for the first time on or after October 4, 2010) – The retirement formula shall be 2% @ 50; three year average final compensation.
- Miscellaneous Tier 1 (employees entering miscellaneous membership for the first time prior to November 28, 2011) – The retirement formula shall be 3% @ 60; single highest year final compensation.
- Miscellaneous Tier 2 (employees entering miscellaneous membership for the first time on or after November 28, 2011) – The retirement formula shall be 2% @ 60; three year average final compensation.

Employees who are "New Members" as defined by the California Public Employees' Pension Reform Act of 2013 (PEPRA) (e.g., an employee hired on or after 1/1/2013 who has never been a CalPERS member or member of a reciprocal system or who has had a break in CalPERS service of at least 6 months or more) will constitute a third tier and be subject to all the applicable PEPRA provisions, which include but are not limited to the following retirement benefits:

- Safety Tier 3 – The retirement formula shall be 2.7% @ 57; three year average final compensation.
- Miscellaneous Tier 3 – The retirement formula shall be 2% @ 62; three year average final compensation.

- 24.2. Employee Retirement Contribution

The employee retirement contribution will be made on a pre-tax basis by implementing provisions of section 414(h)(2) of the Internal Revenue Code (IRC).

Employees shall make the following employee retirement contributions through payroll deductions:

- Tier 1 and Tier 2 safety employees shall pay all of the employee retirement contribution (9%).
- Tier 3 safety employees shall pay one half of the normal cost rate associated with the safety 3<sup>rd</sup> tier.
- Tier 1 miscellaneous employees shall pay all of the employee retirement contribution (8%).
- Tier 2 miscellaneous employees shall pay all of the employee retirement contribution (7%).
- Tier 3 miscellaneous employees shall pay one half of the normal cost rate associated with the miscellaneous 3<sup>rd</sup> tier.

24.3. If the Employer Paid Member Contributions (EPMC) ever is greater than zero, the City will report the value of the EPMC as additional (special) compensation to CalPERS for all CPOA represented employees designated as “classic CalPERS members.”

#### ARTICLE 25 FLEXIBLE BENEFITS PROGRAM

25.1 Employees represented by the CPOA will participate in a flexible benefits program that includes medical insurance, dental insurance, vision insurance, flexible spending accounts (FSAs) and other insurance-related products offered through the CPOA. Each of these components is outlined below.

25.2 Medical Insurance: During the entire term of this agreement, represented employees will be covered by the Public Employees’ Medical and Hospital Care Act (PEMHCA) and will be eligible to participate in the CalPERS Health Program. The City will pay on behalf of all employees covered by this agreement and their eligible dependents and those retirees designated in Section 25.5 of this Article, the minimum amount per month required under Government Code Section 22892 of the PEMHCA for medical insurance through the California Public Employees’ Retirement System (CalPERS). If electing to enroll for medical benefits, the employee must select one medical plan from the variety of medical plans offered.

Effective the pay period that includes March 1, 2013, the City shall contribute the following monthly amounts (called “Benefits Credits”) on behalf of each active employee and eligible dependents toward the payment of 1) medical premiums under the CalPERS Health Program, 2) contributions in the name of the employee to the City’s flexible spending account(s), or 3) contributions of some or all of the premium for dental or vision coverage.

- (a) For employees with “employee only” coverage, the City shall contribute seven hundred and one dollars (\$701) per month that shall include the mandatory payments to CalPERS. If the actual total premiums exceed the City’s total contributions, the employee will pay the difference.
- (b) For employees with “employee plus one dependent” coverage, the City shall contribute nine hundred seventy-five (\$975) per month (increased from \$930 per month) that shall include the mandatory payments to CalPERS. If the actual total premiums exceed the City’s total contributions, the employee will pay the difference.
- (c) For employees with “employee plus two or more dependents” coverage, the City shall contribute one thousand one hundred eighty-six (\$1,186) per month (increased from

\$1,132 per month) that shall include the mandatory payments to CalPERS. If the actual total premiums exceed the City's total contributions, the employee will pay the difference.

The retroactive portion of this increase will be paid to the employee in cash and reported as taxable income. In addition, for the remainder of the 2013 calendar year, the increase in benefit credits outlined in this section will be paid to the employee in cash and reported as taxable income.

The dollar amount paid by the City for the coverage levels employee plus one dependent and employee plus two or more dependents may be increased in the first payroll period of calendar year 2014. The amount of the increase, if any, will be determined by 1) taking the average percentage increase for all of the CalPERS HMO Health plans for January 1<sup>st</sup>, 2014 and 2) adding half of this percentage increase to the previous calendar year's monthly City contribution for each coverage level (rounded to the nearest whole dollar amount) to determine the new monthly City contribution dollar amount.

Beginning the first full pay period following City Council approval of this Memorandum, prospectively only, unused Benefits Credits as outlined above will be paid to the employee in cash and reported as taxable income. If the amount contributed by the City (Benefits Credits) exceeds the cost of the medical insurance purchased by the employee, the employee will have the option of using any "excess credits" to purchase dental insurance, vision insurance, or to contribute to a healthcare or dependent care flexible spending account (FSA). As of January 1, 2014, the employee will also have the opportunity to use any "excess credits" to purchase accidental death and dismemberment (AD&D) insurance.

25.3 Dental Insurance

Represented employees are eligible to enroll in a CPOA-sponsored dental plan that will terminate effective December 31, 2013. During the open enrollment period in 2013, CPOA employees may choose to enroll in or opt out of the city-sponsored dental insurance plan at any coverage level to be effective January 1, 2014.

25.4 Vision Insurance

Represented employees are eligible to enroll in a CPOA-sponsored vision insurance plan that will terminate effective December 31, 2013. During the open enrollment period in 2013, CPOA employees may choose to enroll in or opt out of the city-sponsored vision insurance plan at any coverage level to be effective January 1, 2014.

- 25.5 Each retired employee who was a member of this bargaining unit is covered by the Public Employees' Medical and Hospital Care Act and is eligible to participate in the California Public Employees' Retirement System (CalPERS) Health Program. Represented employees who retire from the City, either service or disability, shall be eligible to continue their enrollment in the CalPERS Health Program when they retire, provided that the individual is enrolled or eligible to enroll in a CalPERS medical plan at the time of separation from employment and their effective date of retirement is within 120 days of separation. The City will contribute the minimum amount per month required under Government Code Section 22892 of the PEMHCA toward the cost of each retiree's enrollment in the CalPERS Health Program. Direct authorization may be established for automatic deduction of payments for health insurance administered by CalPERS.

Employees who retire from the City, either service or disability, shall be eligible to continue to participate in the City's dental and/or vision insurance programs. The cost of such dental and/or

vision insurance for the retiree and eligible dependents shall be borne solely by the retiree. The City shall not charge the COBRA administrative cost to the retirees. A retiree who does not choose continued coverage upon retirement, or drops coverage, is only eligible to return to the City's dental and vision insurance program during open enrollment periods.

The City will invoice the retiree for his/her monthly premiums for dental and/or vision insurance and the retiree must keep such payments current to ensure continued coverage.

#### 25.6 Opt Out Provision

Effective the first full pay period after ratification of this MOU (prospectively only) CPOA represented employees who do not wish to participate in the CalPERS Health Program will have the choice of opting out of the City's medical insurance program, provided they can show that they are covered under another insurance program.

Employees who elect the opt-out provision will be given a reduced City contribution amount (Benefits Credits) of two hundred fifty (\$250) per month to be used toward the purchase of dental insurance, vision insurance, or as a contribution to a flexible spending account. As of January 1, 2014, the employee will also have the option of using any "excess credits" to purchase accidental death and dismemberment (AD&D) insurance. The City contribution amount of two hundred fifty (\$250) per month will be granted to any employee who elects to opt out of the CalPERS Health Program, regardless of the employee's level of coverage (employee only, employee plus one dependent, employee plus two or more dependents).

Beginning the first full pay period following City Council approval of this Memorandum, prospective only, unused Benefits Credits will be paid to the employee in cash and reported as taxable income.

The dollar amount paid by the City for employees who elect the opt-out provision may be increased in the first pay period of calendar year 2014. The amount of the increase, if any, will be determined by 1) taking the average percentage increase for all of the CalPERS HMO health plans for January 1st for the year in question and 2) adding half of this percentage increase to the previous calendar year's monthly City contribution for each coverage level (rounded to the nearest whole dollar amount) to determine the new monthly City contribution dollar amount.

### ARTICLE 26. UNIFORM REIMBURSEMENT

Effective the first full pay period following City Council approval of this agreement, reimbursement to represented employees for the cost of purchasing and maintenance of required uniforms shall be \$26.92 per pay period. Under PEPR, this benefit does not apply to new members (i.e., is not reported to CalPERS as special compensation for new members).

### ARTICLE 27. EDUCATIONAL INCENTIVE

#### 27.1 Educational Incentive Compensation.

Step 1: Applicable to all employees in the bargaining unit represented by the CPOA.

- (a) Requirement: Present proof to the Professional Standards Division Sergeant, Carlsbad Police Department, of the following:

Evidence of the award of an Intermediate certificate issued by the State of California Commission on Peace Officer Standards and Training, or evidence of a Baccalaureate degree and at least two (2) years experience with a police agency, or evidence of an Associate degree and at least four (4) years experience with a police agency. The work experience shall be within the same job description as the employee's current work assignment, (i.e. peace officer, communicator, community service officer).

- (b) Compensation: Satisfactory fulfillment of the above requirements shall be compensated at the rate of ninety dollars (\$90) biweekly. Eligibility for receiving the compensation will be based upon the date the employee provides evidence of eligibility to the Professional Standards Division Sergeant. It is the sole responsibility of the employee to make notification of eligibility for the education incentive pay.

Step 2: Applicable to all employees in the bargaining unit represented by the CPOA.

- (a) Requirement: Present proof to the Professional Standards Division Sergeant, Carlsbad Police Department, of the following:

Evidence of the award of an Advanced certificate issued by the State of California Commission on Peace Officer Standards and Training, or evidence of a Masters degree and at least four (4) years experience with a police agency, or evidence of a Baccalaureate degree and at least six (6) years experience with a police agency, or evidence of an Associate degree and at least nine (9) years experience with a police agency. The work experience shall be within the same job description as the employee's current work assignment, (i.e. peace officer, communicator, community service officer).

- (b) Compensation: Satisfactory fulfillment of the above requirements shall be compensated at the rate of one hundred fifty-six dollars (\$156) biweekly. Eligibility for receiving the compensation will be based upon the date the employee provides evidence of eligibility to the Professional Standards Division Sergeant. It is the sole responsibility of the employee to make notification of eligibility for the education incentive pay.

27.2 Effective beginning the first payroll period in calendar year 2012, the following shall replace the provisions of Section 27.1, above:

Step 1:

- (a) A sworn employee or employee in the communications series of classifications that presents evidence of the award of a Basic certificate issued by the State of California Commission on Peace Officer Standards and Training shall be compensated at the rate of sixty-two dollars (\$62) biweekly. Eligibility for receiving the compensation will be based upon the date the employee provides evidence of eligibility to the Professional Standards Division Sergeant. It is the sole responsibility of the employee to make notification of eligibility for the education incentive pay.
- (b) Other non-sworn employees, upon successful completion of the required probationary period, a minimum of one-year of service with the City of Carlsbad and possession of a high school diploma or GED, shall be compensated at the rate of sixty-two dollars (\$62) biweekly. It is the sole responsibility of the employee to make notification of eligibility for the education incentive pay.

Step 2: Applicable to all employees in the bargaining unit represented by the CPOA.

- (a) Requirement: Present proof to the Professional Standards Division Sergeant, Carlsbad Police Department, of the following:

Evidence of the award of an Intermediate certificate issued by the State of California Commission on Peace Officer Standards and Training, or evidence of a Baccalaureate degree and at least two (2) years experience with a police agency, or evidence of an Associate degree and at least four (4) years experience with a police agency. The work experience shall be within the same job description as the employee's current work assignment, (i.e. peace officer, communicator, community service officer).

- (b) Compensation: Satisfactory fulfillment of the above requirements shall be compensated at the rate of one hundred fifty-two dollars (\$152) biweekly. Eligibility for receiving the compensation will be based upon the date the employee provides evidence of eligibility to the Professional Standards Division Sergeant. It is the sole responsibility of the employee to make notification of eligibility for the education incentive pay.

Step 3: Applicable to all employees in the bargaining unit represented by the CPOA.

- (a) Requirement: Present proof to the Professional Standards Division Sergeant, Carlsbad Police Department, of the following:

Evidence of the award of an Advanced certificate issued by the State of California Commission on Peace Officer Standards and Training, or evidence of a Masters degree and at least four (4) years experience with a police agency, or evidence of a Baccalaureate degree and at least six (6) years experience with a police agency, or evidence of an Associate degree and at least nine (9) years experience with a police agency. The work experience shall be within the same job description as the employee's current work assignment, (i.e. peace officer, communicator, community service officer).

- (c) Compensation: Satisfactory fulfillment of the above requirements shall be compensated at the rate of two hundred eighteen dollars (\$218) biweekly. Eligibility for receiving the compensation will be based upon the date the employee provides evidence of eligibility to the Professional Standards Division Sergeant. It is the sole responsibility of the employee to make notification of eligibility for the education incentive pay.

27.3 An employee that meets the criteria for compensation under more than one step, above, shall receive compensation for only the highest such step for which he or she qualifies.

#### ARTICLE 28. FIELD TRAINING OFFICER

Field training officers or civilian personnel who are assigned to train co-workers shall be compensated at the rate of \$20 for each work shift the employee is engaged in the training function. The selection of field training officers or civilian personnel who are assigned to train co-workers shall be at the sole discretion of the Police Chief.

#### ARTICLE 29. VEHICLES FOR INVESTIGATIONS

Each represented employee who is working in the assignment of detective shall be assigned a designated vehicle and shall be entitled to use the vehicle on each duty shift; provided, however, such assignment of

a designated vehicle is expressly conditioned on the availability of vehicles and does not extend to any detectives assigned in addition to the number assigned as of the date of this Memorandum.

#### ARTICLE 30. LONG TERM DISABILITY

During the term of this Memorandum, City agrees to continue to provide long term disability insurance. The insurance shall provide for a thirty (30) day waiting period prior to payment eligibility. In all other respects, the insurance shall continue unchanged.

#### ARTICLE 31. LEAVE OF ABSENCE

##### 31.1 Occupational Injuries or Illnesses

- 31.1.1 A sworn employee who is temporarily unable to work due to an occupational illness or injury will receive full pay for up to one year as provided in Section 4850 of the Labor Code ("4850 benefits"). The employee may not receive 4850 benefits concurrently with sick leave or any other form of paid time off.

If the employee continues to be unable to work after the employee's 4850 benefits have been exhausted and the employee has not been retired, the employee will receive workers' compensation temporary disability payments (or, if appropriate, vocational rehabilitation maintenance allowance payments) as provided in the Labor Code. To the extent these benefits are less than the employee's full regular pay, the employee shall supplement them by using accrued sick leave, vacation, and/or compensatory time to reach the amount equal to the employee's full regular pay until the employee's leave balances reach zero, at which time the employee would commence an unpaid leave of absence.

- 31.1.2 A non-sworn employee who is temporarily unable to work due to an occupational illness or injury will receive full pay for the first ninety (90) calendar days. If the employee continues to be temporarily unable to work after ninety (90) calendar days, the employee will receive workers' compensation temporary disability payments (or, if appropriate, vocational rehabilitation maintenance allowance payments) as provided in the Labor Code. To the extent that these benefits are less than the employee's full regular pay, the employee shall supplement them by using accrued sick leave, vacation, and/or compensatory time to reach the amount equal to the employee's full regular pay until the employee's leave balances reach zero, at which time the employee would commence an unpaid leave of absence.

##### 31.2 Non-Occupational Injuries or Illnesses

- 31.2.1 An employee who is temporarily unable to work due to a non-occupational illness or injury will receive those disability benefit payments for which the employee is eligible and applies. To the extent that these benefits are less than the employee's full regular pay, the employee shall supplement them by using accrued sick leave, vacation, and/or compensatory time to reach the amount equal to the employee's full regular pay until the employee's leave balances reach zero, at which time the employee would commence an unpaid leave of absence.



31.2.2 Leaves of absence for pregnancy-related disabilities will be handled in the same manner as leaves of absence for non-occupational illnesses or injuries, subject to the pregnancy disability provisions of the California Fair Employment and Housing Act.

31.3 Once an employee has been on an unpaid leave of absence for two full pay periods, the employee will cease accruing sick leave and vacation. In addition, the employee's vacation anniversary date and salary anniversary date will be extended for each calendar day the leave of absence extends beyond the first two full pay periods. Accruals of sick leave and vacation will resume on the first day of the first full pay period after the employee has returned to work.

31.4 To the extent permitted by law, a leave of absence under this article will run concurrently with any leave of absence an employee is entitled to receive under the California Family Rights Act or the federal Family and Medical Leave Act.

#### ARTICLE 32. DISABILITY RETIREMENT

An employee's eligibility for disability retirement will be determined in accordance with the standards and procedures contained in California Government Code sections 20000 et seq.

#### ARTICLE 33. VACATION

Vacation leave can be used in 15 minute increments.

33.1 Upon ratification of this MOU, all eligible CPOA-represented employees shall be entitled to accrue vacation on a daily basis according to the number of continuous full years of employment based on the following vacation accrual schedule:

Beginning with the first (1<sup>st</sup>) working day through the completion of five (5) full calendar years of continuous service – 13 minutes/day

Beginning the sixth (6<sup>th</sup>) year of continuous employment through the completion of ten (10) full calendar years of continuous service – 20 minutes/day

Beginning the eleventh (11<sup>th</sup>) year of continuous employment through the completion of eleven (11) full calendar years of continuous service – 21 minutes/day

Beginning the twelfth (12<sup>th</sup>) year of continuous employment through the completion of twelve (12) full calendar years of continuous service – 22 minutes/day

Beginning the thirteenth (13<sup>th</sup>) year of continuous employment through the completion of thirteen (13) full calendar years of continuous service – 24 minutes/day

Beginning the fourteenth (14<sup>th</sup>) year of continuous employment through the completion of fifteen (15) full calendar years of continuous service – 25 minutes/day

Beginning the sixteenth (16<sup>th</sup>) year of continuous employment, vacation time shall be accrued, and remain at a rate of 26 minutes/day for every full calendar year of continuous employment thereafter.

Employees will not be entitled to take vacation until they have been employed with the City for six (6) full months.

33.2 Vacation Accrual Maximum

No employee will be allowed to accrue vacation hours in excess of the three hundred and twenty (320) hour maximum.

The Police Chief will encourage the taking of accrued vacation leave. Although employees are responsible for actively managing their leave balances, the Police Chief will not unreasonably deny requests for vacation time off. If there are unusual circumstances that would require an employee to exceed the vacation accrual maximum, he/she must submit a request in writing to the Police Chief and the City Manager. The Police Chief and the City Manager may grant such a request if it is in the best interest of the City. Requests will be handled on a case-by-case basis and will be considered only in extreme circumstances.

33.3 Vacation Conversion

Once each January, employees will be allowed to voluntarily convert up to one hundred sixty (160) hours of accrued vacation to cash, provided they have used at least eighty (80) hours of vacation during the pay periods that fall within the prior calendar year.

33.4 Compensation for City Work During Vacation

Occasionally employees on vacation leave are needed for work assignments. Employees returning to work during vacation leave will be compensated as follows:

- (a) Court - --Mandated court appearances during the time of an employee's paid vacation leave from City service will be compensated at time and one half the employee's regular rate of pay, with a minimum of four (4) hours.
- (b) Duty Time – Employees returning to their regularly scheduled work time while on vacation leave shall be paid their applicable regular rate of pay and not be charged the corresponding vacation time.
- (c) Non-Duty Time – Employees returning to work at a time other than their regularly scheduled work time while on vacation leave shall be paid at time and one half the employee's regular rate of pay.
- (d) Recall – This clause shall not limit the City's right to recall an employee from vacation in the event of an emergency.

33.5 Scheduling Vacations

An employee may take his/her annual vacation leave at any time during the year, contingent upon determination by the Police Chief that such absence will not materially affect the department. Each employee must consider the needs of the service when requesting annual vacation leave. An employee shall normally provide forty-eight (48) hours notice in advance of the day(s) he/she is requesting vacation time off. When a family emergency arises which necessitates the use of

vacation time, an employee shall provide as much advance notice as possible considering the particular circumstances.

33.6 Terminal Vacation Pay

An employee with regular status separating from the City service who has accrued vacation leave shall be entitled to terminal pay in lieu of such vacation. No leave credit will be earned on terminal leave payments. When separation is caused by death of an employee, payment shall be made to the estate of such employee or, in applicable cases, as provided in the Probate Code of the State.

ARTICLE 34. HOLIDAYS

- 34.1 The City agrees to observe twelve (12) scheduled paid holidays plus one (1) paid floating holiday per year. Any floating holiday is to be taken at the discretion of the employee with the prior approval of the employee's immediate supervisor. The holiday schedule shall not interfere with, influence, or otherwise change the scheduling of shift employees by the department.

Effective 7/1/2014, the floating holiday will be eliminated.

- 34.2 The holiday schedule for the term of this agreement is as follows:

New Year's Day  
Martin Luther King's Birthday  
Lincoln's Birthday (Monday before President's Day)  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Thanksgiving Friday  
Christmas Day  
One (1) Floating Holiday (eliminated on 7/1/2014)

- 34.3 Employees who work a 5/8 schedule will be paid eight (8) hours of straight time for each holiday. Employees who work a 9/80 schedule will be paid nine (9) hours of straight time for each holiday. Employees who work a 4/10 schedule will be paid ten (10) hours of straight time for each holiday. Employees who work a 3/12 schedule will be paid twelve (12) hours of straight time for each holiday.
- 34.4 Employees will be compensated in cash or compensatory time off (CTO) for holidays in the pay period in which they occur. Employees scheduled to work on a holiday who desire the day off will utilize vacation or CTO.

For purposes of this section, a shift trade will be considered part of an employee's regularly scheduled work shift.

## ARTICLE 35. SALARY/ANNIVERSARY DATE ON PROMOTION

- 35.1 Any Police Officer or Police Corporal promoted to the rank of Police Sergeant will be compensated at a minimum of five percent (5%) above the top step of Corporal.
- 35.2 Any Communications Operator I or II promoted to the position of Communications Supervisor will have their compensation adjusted a minimum of five percent (5%) above the top step of Communications Operator II.
- 35.3 A police employee serving in Salary Step E will be eligible upon promotion for subsequent salary step increases in a higher range on the annual anniversary of the date of promotion. When a police employee is promoted from Step A, B, C, or D, that employee will retain the anniversary date that was in effect in the salary range from which the employee was promoted.

## ARTICLE 36. ALCOHOL AND DRUG POLICY

### I. POLICY

It is the policy of the City of Carlsbad to provide, for its employees, a work environment free from the effects of drugs and alcohol consistent with the directives of the Drug Free Workplace Act. The City of Carlsbad agrees to use a clinical laboratory which is certified by the National Institute on Drug Abuse (NIDA), now known as the Substance Abuse & Mental Health Services Administration (SAMHSA). Testing shall be conducted in a manner to ensure a high degree of accuracy and reliability using techniques, equipment, and laboratory facilities, which have been approved by the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Department of Health and Human Services (DHHS). Collection, chain of custody, and testing procedures shall be conducted in accordance with FTA/DOT regulations, 49 C.F.R. Parts 40 and 655. This policy will be interpreted consistent with the provisions of the Public Safety Officers Procedural Bill of Rights (Government Code Section 3300 et seq.). This policy is intended to accomplish that objective.

#### A. Definitions - As Used in This Policy:

1. "Drug" means any substance which produces a physical, mental, emotional or behavioral change in the user, including but not limited to, prescription medications, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturates, amphetamines, methamphetamines, alcohol, marijuana, and other cannabinoids.
2. "Workplace" means any site where City-assigned work is performed, including City premises, City vehicles or other premises or vehicles, while City-assigned work is being conducted, or within a reasonable time thereafter.
3. "Reasonable suspicion" means a standard for evidence or other indication of impairment of normal physical or mental skills by alcohol or drugs where such impairment could negatively affect work performance or could pose a threat to public or employee safety.
4. "Medical Review Officer (MRO)" is responsible for receiving laboratory confirmed urine drug test results; determining whether there is a legitimate medical explanation for a laboratory-confirmed positive, adulterated, or substituted result; and reviewing and reporting a verified result to the employer in a timely and confidential manner.

5. “CCF” refers to the federal drug testing Custody and Control Form. This form will be completed for all urine specimen collections and requires the employee’s signature each time a specimen is collected.
6. “Urine Collector” is responsible for collecting urine specimens using 49 C.F.R. Part 40 procedures; shipping the specimens to certified laboratories for analysis; and distributing copies of the CCF to the laboratory, MRO, employer, and employee in a timely and confidential manner.
7. “Breath Alcohol Technician (BAT)” is responsible for conducting alcohol screening and confirmation tests by collecting and analyzing breath specimens using an approved screening device and an evidential breath testing (EBT) device; documenting the results of the test; and transmitting the results to the employer in a timely and confidential manner.
8. Third Party Administrator: A service agent who coordinates a variety of drug and alcohol testing services for employers. These services can include random selections; and coordinating urine collections, laboratory testing, MRO services, alcohol testing, and SAP evaluations. The TPA is responsible for ensuring that its service agents are qualified.

B. Employee Responsibilities

1. As a condition of employment, employees shall:
  - a. not engage in the unlawful manufacture, distribution, dispensation, possession or use of alcohol or drugs nor be under the influence of alcohol or drugs in the workplace or while on-call;
  - b. submit to an alcohol and drug analysis and remain on the premises when requested to do so by City management, acting pursuant to this policy, or by law enforcement personnel;
  - c. notify the City of any conviction under a criminal drug statute (including any pleas of nolo contendere), if such conviction was based on a violation which occurred in the workplace, no later than five days after such conviction;  
  
(notification under this subsection does not relieve an employee from the disciplinary consequences of the conduct upon which a criminal conviction is based); and
  - d. abide by all terms of this policy.
2. Employees are required to notify their supervisors when taking any medication or drugs, prescription or non-prescription (over-the-counter medications), which interfere with safe or effective performance of their duties or operation of City equipment.

3. Off-duty involvement with any controlled substance including, but not limited to manufacture, distribution, dispensing, possession, use or any conviction under a criminal drug statute whose scope and employment are relevant to City employment may result in disciplinary action up to and including termination if there is relevant nexus between such off-duty involvement and the employee's employment with the City, consistent with the legal requirements for disciplinary due process.

C. Consequences of Violation of Policy

1. Failure to abide by the terms of this policy shall be grounds for disciplinary action, up to and including termination.
2. In addition to any disciplinary action, an employee who fails to abide by this policy may also be directed or allowed to satisfactorily participate in an approved alcohol or substance abuse assistance or rehabilitation program.

II. DRUG AND ALCOHOL ANALYSIS

A. Pre-employment Drug and Alcohol Analysis

1. Upon receiving a conditional offer of employment, an otherwise successful candidate must submit to a drug and alcohol analysis. At the City's discretion, this analysis may be in the form of "breathalyzer," urine, or blood analysis.
2. Persons whose results are positive for either drugs or alcohol will be rejected for City employment.

B. Employee Drug and Alcohol Analysis

1. If a manager or supervisor of the City has reasonable suspicion that an employee is under the influence of drugs or alcohol while in the workplace or subject to duty, the employee shall be:
  - a. Prevented from engaging in other work; and
  - b. Required to submit to a drug and alcohol analysis. At the City's discretion, this analysis may be in the form of "breathalyzer," urine, or blood analysis.
  - c. An employee may also be required to remain on the premises for a reasonable time until arrangements can be made to transport the employee to his or her home.
2. Some examples of "reasonable suspicion" as defined in Section 1.A.3. include, but are not limited to, the following, when confirmed by more than one person having supervisory authority:
  - a. slurred speech.

- b. alcohol odor on breath;
  - c. unsteady walking or movement not related to prior injury or disability;
  - d. an accident involving City property having no obvious causal explanation other than possible employee responsibility;
  - e. physical or verbal behaviors that are disruptive, non-responsive, unusual for that employee or otherwise inappropriate to the workplace situation;
  - f. attributable possession of alcohol or drugs;
  - g. information obtained from a reliable person with personal knowledge that would lead a reasonably prudent supervisor to believe that an employee is under the influence of alcohol or drugs.
3. Refusal to remain on the premises or to submit to a drug and alcohol analysis when requested to do so by City management or by law enforcement officers shall constitute insubordination and shall be grounds for discipline, up to and including termination.
  4. A drug and alcohol analysis may test for the presence of any drug which could impair an employee's ability to effectively and safely perform the functions of his or her job.
  5. A positive result from a drug and alcohol analysis may result in disciplinary action, up to and including termination.
  6. City agrees to take steps to protect the chain of custody of any drug test sample.
  7. Employee will be placed on paid administrative leave pending the completion of any testing process and any investigation deemed necessary by the City.

C. Random Selection Testing

All sworn employees in the Vice Narcotics Unit of the Carlsbad Police Department, with the classifications of Police Officer, Police Corporal, and Police Sergeant shall be subject to random substance abuse tests throughout the fiscal year. The ongoing testing will be conducted on an unannounced basis. Employees will have an equal chance of being selected and tested in each selection period. The names of all eligible employees will be placed in a pool, with the selection of employees made by a scientifically valid method via the Third Party Administrator of the program. Once an employee's name is pulled for testing, his or her name will be returned to the pool.

Random testing will be performed as follows:

- Drugs - Fifty percent (50%) of the total number of covered employees shall be tested annually.
- Alcohol – Twenty five percent (25%) of the total number of covered employees shall be tested annually.

### 1. Employee Notices

When an employee has been randomly selected, the employee will be discreetly notified of his or her test in a Testing Notice. The supervisor will document the date and time the Testing Notice is delivered and then the employee will be required to sign the Testing Notice, which also acknowledges that the employee being tested has been advised of the drug and alcohol testing policy. Additionally, the employee will be asked by the Urine Collector or BAT to complete the necessary form(s), either the CCF or ATF or both, for the test(s) to be conducted and analyzed.

### 2. Testing for Prohibited Drugs

A Urine Collector will collect a urine specimen to be analyzed by a certified laboratory for the presence of drugs prohibited under this policy. An employee must void 45 mL of urine all at once for an accurate collection. At the collection site, the Urine Collector will divide the specimen into two samples: 30 mL of which will be labeled as the primary sample (Bottle A) and 15 mL labeled as the split sample (Bottle B). The urine samples will be sent under seal, with required custody and control forms, to a laboratory approved by SAMHSA. An initial drug screen will be conducted on each primary sample. If the initial drug screen does not yield a negative test result, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in DOT regulations, as amended. If the result of the primary sample is not negative, the split sample as well as the primary sample will be retained in frozen storage for at least 1 year from the date the laboratory receives it.

### 3. Medical Review Officer

All drug test results shall be interpreted and evaluated by a qualified MRO, who shall meet the requirements set forth in DOT regulations. The MRO shall not convey test results to the City until the MRO has determined that the test result was positive or negative, or should be cancelled. When the MRO reports the result of the verified positive test, the MRO may disclose the drug(s) for which there was a positive result. The MRO may only reveal the levels of a positive drug test result to the City of Carlsbad, the employee, or the decision maker in a lawsuit, grievance or other proceeding initiated by the employee and arising from a verified positive result, or as otherwise required by law.

If the MRO declares a drug test to be invalid for any reason, the test is considered canceled, and neither positive nor negative. However, a re-collection under direct observation may be ordered by the MRO.



#### 4. Split Specimen Testing

Any employee who questions the results of his/her required drug test under this policy may, within 72 hours of having been notified of a verified positive test by the MRO, request that an additional test be conducted on the split sample (Bottle B) of the original specimen that was voided. This test will be conducted at a different DHHS certified laboratory, selected by the employee. The test must be conducted on the split sample that was provided at the same time as the original sample. If Bottle B also tests positive, then the employee may be subject to disciplinary sanctions, up to and including termination. If the testing of Bottle B produces a negative result, or for any reason Bottle B is not available, the test is considered cancelled and no sanctions are imposed. However, a re-collection under direct observation may be ordered at the MRO's sole discretion. The employee shall bear the responsibility of paying for the testing of the split specimen (Bottle B).

#### 5. Alcohol Testing

Alcohol tests will be performed by a certified BAT. If the initial test on an employee using an approved EBT indicates a breath alcohol concentration (BAC) of 0.02 or greater, a second test will be performed no sooner than 15 minutes but no later than 30 minutes from the first attempt to confirm the results of the initial test. Employees whose confirmatory test results indicate a BAC of 0.04 or greater may be subject to discipline, up to and including termination.

#### 6. Refusal to Test

An employee that refuses to submit to drug or alcohol testing required by the City shall be prohibited from performing or continuing to perform public safety functions and shall be assigned to a light duty assignment or placed on paid administrative leave at the City's discretion. An employee's refusal to submit to drug or alcohol testing required by the City for any reason shall be considered an act of insubordination and may also result in disciplinary action, up to and including termination. Refusal to test shall include the following:

- a. Failure to appear for any test within a reasonable time, as determined by the employer, consistent with applicable DOT regulations, after being directed to do so by the employer;
- b. Failure to remain at the testing site until the testing process is complete;
- c. Failure to provide a urine specimen for any drug test required;
- d. In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of provision of a specimen;
- e. Failure to provide a sufficient amount of urine when directed, and it has been determined, through a medical evaluation, that there was not adequate medical explanation for the failure;
- f. Failure or decline to take an additional drug test the employer or collector has directed you to take;
- g. Failure to undergo a medical examination or evaluation, as directed by the MRO;
- h. Failure to cooperate with any part of the testing process;

- i. For an observed collection, failure to follow the observer's instructions;
- j. Possession or wearing of a prosthetic or other device that could be used to interfere with the collection process; or
- k. Admit to the collector or MRO that you adulterated or substituted the specimen.

The above refusals to test shall incorporate any future amendments to DOT Regulation 49 CFR Part 40 Section 40.191.

#### 7. Follow-up

Covered employees who test positive may be referred to a Substance Abuse Professional (SAP) for assessment. Any covered employee identified by the Substance Abuse Professional as needing assistance and who is not being terminated, will be subject to follow-up testing upon returning to duty. After the SAP has notified the City the employee has completed the SAP's requirements, which may include treatment and/or education, an eligible employee may return to work. However, the employee shall not perform public safety functions until the City has obtained negative drug test results from the MRO. This test is referred to as the "Return to Duty" test in the DOT regulations. Both Return to Duty and Follow-Up Tests shall be under direct observation.

The Follow-Up Tests shall appear in a testing plan. The testing plan will be developed by the SAP and will include the number of tests required over a specified duration. The City has no discretion to alter the SAP's testing plan and the employee shall not have the right to obtain a copy of the testing plan. A minimum of six unannounced tests will be performed over the twelve month period following the employee's return to duty. Follow-up testing may be performed for up to 60 months following return-to-duty. Such testing shall be separate from participation in the random testing selection procedures. Follow-up testing may include tests for other substances beyond the employee's initial positive test of drug and/or alcohol use when the SAP has reason to believe that additional testing is warranted. If an employee is referred to a substance abuse program, payment for the program is the responsibility of the employee.

### III. EMPLOYEE ASSISTANCE PROGRAM

- A. The City has a well established voluntary Employee Assistance Program (EAP) to assist employees who seek help for substance abuse problems. The EAP is available for assessment, referral to treatment, and follow-up. Any employee of the City wishing confidential assistance for a possible alcohol or drug problem can call the EAP office and arrange for an appointment with a counselor.
- B. Employees who are concerned about their alcohol or drug use are strongly encouraged to voluntarily seek assistance through the EAP. All self-referral contacts are held in confidence by the EAP.
- C. Participation in the employee assistance program will not replace normal disciplinary procedures for unsatisfactory job performance or for violation of any City policy.

#### ARTICLE 37. EMPLOYER SEARCHES

For the purpose of enforcing City or Department policies, directives, and work rules, the City reserves the right to search, with or without prior notice to the employee, all work areas and property in which the City maintains full or joint control with the employee, including, without limitation, City vehicles, desks, lockers, file cabinets, and bookshelves. These areas and property remain part of the workplace context even if the employee has placed personal items in them. Employees are cautioned against storing personal belongings in work areas and property under full or joint City control since such work areas may be subject to investigation or search under this article.

Employer searches may occur when there is a reasonable suspicion that the employee has violated a City or Department policy, directive, or work rule and that the area or property to be searched may contain evidence of that violation. Searches will be conducted by persons having supervisory and/or other legal authority to conduct them. Searches will not normally occur without the concurrence of more than one supervisor.

If the Public Safety Officers Procedural Bill of Rights Acts (Government Code sections 3300 et seq.) is applicable to a particular search, then the City will comply with the Act notwithstanding anything to the contrary in this article.

Nothing in this article will prevent the City from taking appropriate action if there is inadvertent discovery of evidence of a policy, directive, or work rule violation.

#### ARTICLE 38. FLEXIBLE JOB SHARING

Employees may, with the express written approval of the City Manager, the Human Resources Director, and the Police Chief, participate in a flexible job-sharing program. The specifics of such a program shall be determined by the employees and the City on a case by case basis. Prior to the implementation of any such program, a written agreement setting forth the specifics of the program shall be signed by the affected employees and the City. This article shall not be subject to the grievance procedure.

#### ARTICLE 39. DEFERRED COMPENSATION LOAN PROVISION

The City and the CPOA agree to work with the City's deferred compensation provider (currently ICMA Retirement Corporation) to implement a personal loan provision for represented employees as soon as administratively possible. It is acknowledged that the City will assist in the administrative set-up of this benefit but that the City has no liability if an employee should default on the repayment of such a loan.

#### ARTICLE 40. LIFE INSURANCE AND VOLUNTARY BENEFITS

All CPOA-represented employees shall receive City paid life insurance in an amount equal to one times their basic yearly earnings. To determine the benefit, the amount of insurance is rounded to the next higher \$1,000 multiple, unless the amount equals a \$1,000 multiple.

The City provides various voluntary benefits available at the employee's cost. Employees may select among various levels of coverage. For information regarding these benefits, contact the Human Resources Department at 760-602-2440.

#### ARTICLE 41. JOINT EFFICIENCY STUDY

During 2013, the City and CPOA shall jointly select a qualified consultant to perform a comprehensive study regarding ways to increase department efficiencies, including recommendations for patrol scheduling. If the parties can not agree on a consultant, the parties shall utilize a knockout process with an odd number of consultants with the party striking first to be determined by coin toss. The consultant shall work equally for both parties which means that the consultant shall meet with both parties on a pre-determined schedule, communicate jointly and disseminate all reports concomitantly. The consultant's final recommendations are not binding on either party.

The parties agree to a re-opener on or after 1/1/2014 to continue negotiations toward conversion from a 3/12 to a 4/10 schedule or possible alternatives to a 4/10 schedule for patrol.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Memorandum to be effective as stated herein.

CITY OF CARLSBAD

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JOHN COATES, City Manager

Date

APPROVED AS TO FORM:

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CELIA BREWER, City Attorney

Date

CARLSBAD POLICE OFFICERS' ASSOCIATION

---

KEVIN LEHAN, President

Date